

SEP 17 2003

Cowings v. Barnhart, No. 03-15278
Ferguson, Circuit Judge, dissenting.

CATHY A. CATTERSON
U.S. COURT OF APPEALS

I respectfully dissent. Laura Jean Cowings (“Cowings”), a disabled individual, has been receiving Supplemental Security Income (“SSI”) benefits since 1997. Today, the majority upholds the District Court’s decision to render Cowings ineligible for SSI benefits because of her inheritances in 1998 and 1999, despite the fact that she refuses to accept the money. Maj. Op. at 1. At a hearing before the Administrative Law Judge (“ALJ”), Cowings testified that the inheritances consisted of “illegal funds” connected to a family feud, and disavowed the funds.

Under the Social Security regulations, an inheritance is considered unearned income¹ which is counted “[w]hen you receive it or when it is credited to your account or set aside for your use.” 20 C.F.R. § 416.1123 (1999). It is hard to believe that Congress’s intent was to punish those who do not claim their inheritances and thus gain no economic benefit from the money even though it is held in their name. The statute presumes that the inheritance would be accepted or desired. In implementing the SSI program, Congress’s goal of meeting the

¹ “Some types of unearned income are – (g) Gifts and inheritances. . . An inheritance is something that comes to you as a result of someone’s death.” 20 C.F.R. § 416.1121 (1999).

subsistence needs of “the Nation’s destitute, aged, blind and disabled by guaranteeing to them a minimum level of income to meet their needs for food, clothing and shelter[,]” tempered by the need “to preserve the fiscal solvency of the SSI program by protecting its coffers from dissipation through neglect, abuse and fraud.” *Martin v. Sullivan*, 932 F.2d 1273, 1278 (9th Cir. 1991) (citation omitted). This is certainly not a case of neglect, abuse or fraud by an SSI recipient. Once she has withdrawn the money out of the treasury, then the money should be reported to the Social Security Administration and count against her as received. A flexible reading of the Social Security Regulation is warranted here.

By the conclusion of these proceedings, Cowings will be denied her SSI benefits and will have lost all possibility of claiming her inheritances. The gifts were deposited with the Los Angeles County Treasurer and, in September 2003, the inheritance of \$10,191.54 will escheat to the state. The remaining gift of \$6,413.13 will escheat in August 2004.

Because I find it patently unjust to deny an otherwise qualified SSI recipient benefits due to an inheritance she has rejected, I must dissent.